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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 ESTATE OF DAVID BURKHART,) No. C 07-5467 PJH
 14 Plaintiff,) [PROPOSED] ORDER GRANTING
 15 v.) DEFENDANT'S MOTION TO DISMISS
 16 UNITED STATES DEPARTMENT OF) Date: August 6, 2008
 17 VETERANS AFFAIRS,) Time: 9:00 a.m.
 18 Defendant.) Place: Courtroom 3, 17th Fl.

19 This action having come regularly on for hearing before the Court on the motion of defendant
 20 to dismiss pursuant to F.R.C.P. 12(b)(1), 12(b)(6) and 12(b)(7), and the respective parties having
 21 been afforded an opportunity to be heard, the Court having considered the respective pleadings
 22 and the arguments thereon, and the entire matter having been duly submitted after the Court was
 23 fully advised thereon,

24 IT IS HEREBY ORDERED that the defendant's motion to dismiss is GRANTED based on
 25 the following reasons:

26 1. The Court lacks subject matter jurisdiction over plaintiff David T. Burkhart's claims
 27 because he did not exhaust his administrative remedies. Moreover, Mr. Burkhart's claim for loss
 28 of parental consortium fails to state a cause of action.

2. The Court lacks subject matter jurisdiction over plaintiff Sally Burkhardt's loss of consortium claim because she did not exhaust her administrative remedies related to that claim.

3. Decedent David Burkhart's heirs are necessary, indispensable parties who must be joined to Ms. Burkhart's wrongful death action.

4. The Court lacks subject matter jurisdiction over plaintiff Estate of David Burkhart's survivor claims because no administrative claim related to those claims has been filed.

Moreover, Ms. Burkhart has failed to properly allege that she has standing to assert survivor claims on behalf of the Estate of David Burkhart.

Dated: _____

PHYLLIS J. HAMILTON
UNITED STATES DISTRICT COURT JUDGE